

Memorandum 2022-7

Fish and Game Law: Phase One Public Comment

In this study, the Commission¹ has been directed by the Legislature to consider revision of the Fish and Game Code in order to make technical improvements to that law, without making any significant substantive change to the effect of the law.²

In December 2018 the Commission approved and distributed a tentative recommendation that would recodify the existing Fish and Game Code in a proposed new Fish and Wildlife Code.³

After releasing the tentative recommendation, the Commission decided to divide the consideration of public comments into two phases, with “Phase One” addressing comment on purely technical issues that were raised in Notes within the tentative recommendation. The Phase One comments were submitted by the Fish and Game Commission (hereafter, “FGC”), and the Department of Fish and Wildlife (hereafter, “DFW”).⁴

The Commission also decided to prepare a draft recommendation that would address the Phase One issues in existing law (rather than in the proposed recodification).⁵

This memorandum continues the “Phase One” changes proposed by the Commission, pursuant to a methodology that divides the comments into different categories, based on their posture.⁶ This month’s memorandum addresses only two categories of comments.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See 2012 Cal. Stat. res. ch.108 (ACR 98 (Wagner)).

3. See Memorandum 2018-67 and its First Supplement; Minutes (Dec. 2018), p. 10.

4. The comments discussed in this memorandum are reproduced in the attached Exhibit.

5. See Memorandum 2021-11; Minutes (Feb. 2021), p. 5. “Phase Two” would involve consideration of proposed organizational changes to the existing law.

6. See Memorandum 2021-16, pp. 2-3; Minutes (Mar. 2021), p. 4.

Unless otherwise indicated, all statutory references in the memorandum are to the existing Fish and Game Code, or to the proposed Fish and Wildlife Code as set out in the Commission's previously distributed tentative recommendation.

CHANGES THAT SHOULD BE MADE

Comments previously submitted by the entities on the proposed revisions in this section required follow-up by Commission staff, for one of two reasons. In some cases, the entities had indicated that a proposed revision would not cause a substantive change to existing law, but stopped short of affirmatively supporting the revision. In other instances, an entity comment was either unclear to staff, or suggested that a Commission Note in the tentative recommendation may have been less than clear.

The staff has since discussed each of the following proposed revisions with one or both entities. Those that have now been expressly approved for inclusion in a new draft recommendation from the Commission by at least one entity, with no opposition from the other, have been "promoted" to this category of revised provisions.

Because this is the first time these proposed revisions are being presented in statutory language that would allow for implementation in the existing Fish and Game Code rather than in a recodified code, **the staff is recommending only provisional approval of the revisions set out below.** Once the commenters have had time to ensure that the statutory drafting of the proposed revisions is acceptable, the revised provisions will be added to the cumulative draft provided to the Commission at each meeting.

In most instances, the rationale for the proposed revisions that follow is set out in the proposed Comment following the revised section. In many cases, the revisions reflected were proposed by the Commission in the recodified version of the section simply to enhance the clarity of the section. In a handful of other cases, the rationale for the proposed revision is explained in a brief narrative preceding the revised section.

This entire section of the memorandum will be treated as a consent item. Unless a Commissioner or member of the public requests that a revision in this section be discussed, it will not be individually presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the

Commission to provisionally approve all revisions in this section as a group for inclusion in the draft recommendation.

Proposed Section 4874 (Existing Section 12153)

§ 12153 (amended). License forfeiture

12153. A commercial fishing license is forfeited for the violation of Sections 1050.1 to ~~1060~~ 1059, inclusive, or Section 2012, or of any of the provisions of this code relating to the use of nets.

Comment. Section 12153 is amended to delete reference to a repealed and discontinued cross-reference.

Proposed Section 5332 (Existing Section 3680)

§ 3680 (amended). Pigeon

3680. ~~Any (a) Except as provided in subdivision (b), any person, other than the owner thereof, who at any time, by any means or in any manner, purposely takes any racing pigeon that at the time of taking is currently registered with a recognized organization, is guilty of a misdemeanor. However, the~~

(b) This section does not apply to either of the following:

(1) The taking of a registered racing pigeon by its owner.

(2) The incidental take of a registered racing pigeons with the pigeon while shooting or taking of a wild band-tailed pigeons pigeon or a domestic pigeons pigeon (Columba livia), is not a violation of this section.

Comment. Section 3680 is amended for clarity, and to add subdivision designations.

Proposed Section 8715 (Existing Section 315.3)

§ 315.3 (amended). Opening identified waters to take

315.3. The commission may, ~~at any time when facts are presented to the commission which were not presented to the commission at the time of its December meeting held pursuant to Section 209,~~ open any stream, lake, or other inland waters, or portions thereof, to the taking of any species or subspecies of fish for the proper utilization of the fish, for such time as the commission may designate or until such time as new legislation thereon enacted by the Legislature may become effective.

Comment. Section 315.3 is amended to delete reference to an obsolete procedure.

Proposed Sections 29210, 29220 (Existing Section 355)

§ 355 (amended). Commission regulations relating to Migratory Bird Treaty Act

355. (a) The commission may, annually, adopt regulations pertaining to migratory birds to conform with or to further restrict the rules and regulations prescribed pursuant to the Migratory Bird Treaty Act.

(b) Regulations adopted under this section are not subject to Sections 11343.4, 11346.1, 11346.4, and 11346.8 of the Government Code.

(c) Every regulation of the commission adopted pursuant to this article ~~shall be filed with the Secretary of State, and~~ shall become effective upon filing, unless otherwise specified in the regulations.

Comment. Section 355 is amended to add subdivision designations, and delete superfluous text. See Gov't Code Section 11343 (generally requiring all regulations adopted by a state agency to be filed with the Secretary of State).

Proposed Section 9560 (Existing Section 2007)

§ 2007 (amended). Trap gun

2007. (a) It is unlawful to set, place, or cause to be set, or placed, any trap gun.

(b) A "trap gun" is a firearm loaded with other than blank cartridges and connected with a string or other contrivance contact with which will cause the firearm to be discharged.

Comment. Section 2007 is amended for clarity, and to add subdivision designations.

Proposed Sections 12850, 13100, 13400 (Existing Section 7149.05)

§ 7149.05 (amended). Sport fishing license

7149.05. (a) A sport fishing license granting the privilege to take any fish, reptile, or amphibian anywhere in this state for purposes other than profit shall be issued to any of the following:

(1)(A) A resident, 16 years of age or older, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder of the year, upon payment of a base fee of thirty-one dollars and twenty-five cents (\$31.25).

(B) The director may authorize the issuance of a license under subparagraph (A) that is valid for the period of 12 consecutive months beginning on the date specified on the license instead of only for the calendar year.

(2)(A) A nonresident, 16 years of age or older, for the period of a calendar year, or, if issued after the beginning of the year, for the

remainder of the year, upon payment of a base fee of eighty-four dollars (\$84).

(B) The director may authorize the issuance of a license under subparagraph (A) that is valid for the period of 12 consecutive months beginning on the date specified on the license instead of only for the calendar year.

(3) A nonresident, 16 years of age or older, for ~~the a~~ a period of 10 designated consecutive days beginning on the date specified on the license, upon payment of the fee set forth in paragraph (1). Notwithstanding Section 1053.1, more than one 10-day license for different 10-day periods may be issued to, or possessed by, a person at one time.

(4) A resident or nonresident, 16 years of age or older, for two designated consecutive days, upon payment of one-half the fee set forth in paragraph (1). Notwithstanding Section 1053.1, more than one ~~single-day~~ two-day license ~~issued~~ for different ~~days~~ two-day periods may be issued to, or possessed by, a person at one time.

(5) A resident or nonresident, 16 years of age or older, for one designated day, upon payment of a base fee of ten dollars (\$10). Notwithstanding Section 1053.1, more than one one-day license for different days may be issued to, or possessed by, a person at one time.

(b) California sport fishing license validations shall be issued by authorized license agents in the same manner as sport fishing licenses, and no compensation shall be paid to the authorized license agent for issuing the validations except as provided in Section 1055.1.

(c) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

(d) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.

(e) The commission shall adjust the amount of the fees specified in subdivision (d), as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to those licenses.

(f)(1) The director shall provide the Legislature, on or before January 1, 2025, recommendations for increasing fees for all sport fishing licenses to levels that provide adequate resources to fund sport fishing, including all necessary supporting activities, at the department.

(2) The director shall submit to the Legislature, on or before July 1, 2028, a written report evaluating all sport fishing licenses issued pursuant to this section, including sales information, the cost of administering and implementing sport fishing licenses to the department and commission, and evidence of any changes in the number of new or renewing sport fishing license participants. The director shall collect all relevant, appropriate, and sufficient data

necessary to evaluate sport fishing licenses issued pursuant to this section and to justify the amount of the license fees assessed pursuant to this section, including information about data collection and enforcement costs. Data collection efforts pursuant to this paragraph shall avoid duplication and use data collected for other purposes, to the extent feasible.

(3) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2029, pursuant to Section 10231.5 of the Government Code.

(4) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(g) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

Comment. Paragraphs (3), (4), and (5) of subdivision (a) of Section 7149.05 are amended to expressly state the inapplicability of Section 1053.1 to those provisions. See Section 1053.1(a)(1).

Proposed Section 12955 (Existing Section 7180.1)

§ 7180.1 (amended). Fishing on Colorado River

7180.1. (a) Any person taking fish or amphibia for purposes other than profit from or on a boat or other floating device on the waters of the Colorado River ~~and~~ or on adjacent waters, except canals, drains, or ditches used to transport water used for irrigation or domestic purposes, shall have in ~~his or her~~ their possession a valid sportfishing license issued by either the State of Arizona or State of California.

~~(b) In addition to either of the licenses, a person taking fish or amphibia as indicated shall have in his or her possession a Colorado River special use validation. If he or she is a person having in his or her possession a valid California sportfishing license, he or she shall have an Arizona special use validation to fish legally the waters described above. If he or she is a person having in his or her possession a valid Arizona sportfishing license, he or she shall have a California special use validation to fish legally the waters described above.~~

~~(c) A special use validation, when accompanied by the proper license, permits fishing in any portion of those waters, and permit fishermen to enter the waters from any point. The fee for a Colorado River special use validation is three dollars (\$3).~~

~~(d) (b)~~ This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

Comment. Subdivision (a) of Section 7180.1 is amended to correct a grammatical error, and to eliminate gendered pronouns.

Subdivisions (b) and (c) are deleted to reflect the discontinuation of Colorado River special use validations issued by the state of California.

Proposed Section 12960 (Existing Section 7181.1)

§ 7181.1 (amended). Colorado River shoreline fishing

7181.1. (a) A person fishing from the shore in the waters of the Colorado River located in Arizona or California shall have in ~~his or her~~ their possession a valid sportfishing license issued by the state that has jurisdiction over that shore. ~~That shoreline fishing does not require a Colorado River special use validation as long as the fisherman remains on the shore and does not embark on the water. Any person, however, having in his or her possession a valid Arizona sportfishing license and a California special use validation may fish from the shore in the waters of the Colorado River, or adjacent waters, except canals, drains, and ditches used to transport water used for irrigation or domestic purposes, located in California, without a sport fishing license issued by the State of California.~~

(b) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

Comment. Section 7181.1 is amended to reflect the discontinuation of Colorado River special use validations issued by the state of California, and to eliminate gendered pronouns.

Proposed Section 13405 (Existing Section 7182.1)

§ 7182.1 (repealed). Colorado River special use validations

~~7182.1. (a) Arizona Colorado River special use validations shall be issued by California authorized license agents under the supervision of the department in the same manner as sportfishing licenses are issued, and California sportfishing licenses and California Colorado River special use validations shall be issued by Arizona license dealers under the supervision of the Arizona Game and Fish Commission.~~

~~(b) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.~~

Comment. Section 7182.1 is repealed based on the discontinuation of Colorado River special use validations issued by the state of California.

Proposed Section 15100 (Existing Section 8398)

§ 8398 (amended). Take in Tomales Bay

8398. (a) It is unlawful to take fish for commercial purposes in that portion of Tomales Bay in District 10 between a line drawn from the most northern tip of Tomales Point northeast, 47° magnetic, to the opposite shore in the vicinity of Dillon Beach, and a line drawn

west from the western tip of Tom's Point, 252° magnetic, to the opposite eastern shore of Tomales Point.

(b) This section does not apply to the taking of oysters by persons licensed under Article 4 (commencing with Section 6480), Chapter 5, Part 1, Division 6 from their allotted areas a person who has obtained a state water bottom lease pursuant to Chapter 5 (commencing with Section 15400) of Division 12 for the cultivation of oysters, in their lease site.

Comment. Subdivision (b) of Section 8398 is amended to revise an incorrect cross-reference, and reflect that the taking of oysters is presently authorized and governed by Chapter 5 (commencing with Section 15400) of Division 12 of this code.

The section is also amended to add subdivision designations.

Proposed Section 15105 (Existing Section 8400)

§ 8400 (amended). Take only with baitfish traps

8400. (a) California killifish (*Fundulus parvipinnis*), mudsuckers (*Gillichthys mirabilis*), and yellowfin gobies (*Acanthogobius flavimanus*) may only be taken for a commercial purposes purpose with baitfish traps in the tidewaters of Districts 3^{1/2}, 4, 4^{1/8}, 4^{3/4}, 16, 17, and 21, in the tidewaters of District 10 south of the City and County of San Francisco, in the Salton Sea, and in Imperial and Riverside Counties.

(b) Shiner perch (*Cymatogaster aggregata*), staghorn sculpin (*Leptocottus armatus*), mudsuckers (*Gillichthys mirabilis*), and yellowfin gobies (*Acanthogobius flavimanus*) may only be taken for a commercial purposes purpose with baitfish traps in Districts 11, 12, and 13 and in the tidewaters of Districts 2 and 2^{1/2}.

(c) Any unauthorized species taken incidentally in a baitfish traps trap in the districts specified a district listed in subdivisions subdivision (a) and or (b) shall be immediately released.

(d) Baitfish traps, as described in Section 9020, may be used subject to Article 1 (commencing with Section 9000) of Chapter 4.

Comment. Section 8400 is amended for clarity.

In preparing the proposed language for Section 8400, the staff spotted an issue that was not addressed in the tentative recommendation. In subdivisions (a) and (b), placement of the word "only" seems problematically vague, as it leaves the intended application of its limitation unclear.

The staff will work further with the Commenters to discuss an acceptable way to address that apparent problem.

Proposed Section 22515 (Existing Section 8104)

DFW indicates that the following section was intended to apply to herring permittees but appears to have been incorrectly placed in the existing code outside the article governing those permittees. DFW agrees that the section should be slightly revised, and relocated to that article of the existing code.

§ 8104 (amended). Transfer of permit of deceased permittee

~~8104~~ 8552.65. (a) Upon the death of a ~~limited-entry~~ herring permittee, the permit shall vest in the permittee's estate or in the surviving community estate, and may be transferred by the executor, administrator, personal representative, or surviving spouse to a qualified pointholder pursuant to Section 8552.2, or to a ~~partner~~ qualified partner, pursuant to Section 8552.6. ~~This~~

(b) The transfer shall be initiated by notice to the department, in writing, sent by certified mail, within one year of the date of death.

(c) If no transfer is initiated within one year of the date of death, the permit shall revert to the department for disposition pursuant to Section 8552.4, and ~~shall be~~ thereafter be treated as a herring permit that has not been renewed.

(d) The department may, upon written application, grant an extension of time up to one additional year for the transfer to be initiated.

Comment. Section 8104 is amended and renumbered as Section 8552.65 to clarify its intended application to herring permittees.

The section is also amended for clarity, and to add subdivision designations.

Proposed Section 31115, 34605, 37365 (Existing Section 4188)

§ 4188 (amended). Access by licensed hunters for depredator control

4188. (a) If a landowner or tenant applies for a permit under Section 4181 ~~for to take~~ to take wild pigs or wild turkeys, or under Section 4181.5 ~~for to take~~ to take deer, the department shall ~~notify the landowner or tenant~~ inform the applicant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 to control wild pigs, wild turkeys, and deer.

(b) The commission, in lieu of a permit ~~as described in~~ subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, ~~under~~ may pursuant to appropriate ~~regulations,~~ regulation authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits

necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.

Comment. Section 4188 is amended for clarity.

Proposed Section 32310(b) (Existing Section 4154)

§ 4154 (amended). Agreements relating to control of harmful nongame mammals

4154. (a) The department may enter into cooperative contracts with the United States Fish and Wildlife Service in the Department of the Interior ~~in relation to the control of nongame mammals and for that~~ the purpose of controlling or eradicating any nongame mammal, and may expend any money made available to the department for ~~expenditure for the control or eradication of nongame mammals~~ that purpose.

(b) This section does not apply to bobcats.

Comment. Section 4154 is amended for clarity.

Proposed Section 33215 (Existing Section 4755)

§ 4755 (amended). Countersigning

4755. Any person legally killing a bear in this state shall have the tag for that bear countersigned by a ~~fish and game~~ commissioner, a person employed in the department, a person designated for ~~this~~ that purpose by the commission, ~~or by~~ a notary public, a postmaster, ~~postmistress,~~ a peace officer, ~~or by~~ an officer authorized to administer oaths, before transporting ~~that the~~ bear, ~~except for the purpose of taking it to transport the bear~~ to the nearest officer person authorized by this section to countersign the tag, on the route ~~being followed from the point from~~ where the bear is taken to that person.

Comment. Section 4755 is amended for clarity.

Proposed Section 33220 (Existing Section 4757)

§ 4757 (amended). Retention of skin and head

4757. Any person taking ~~any~~ a bear must retain ~~in his~~ possession of the skin of the bear and the portion of the bear's head that includes both ears, during the open season ~~thereon,~~ for that bear and for 15 days thereafter, ~~the skin and portion of the head bearing the ears,~~ and must produce the skin and that portion of the head upon the demand of any officer authorized to enforce the provisions of this code.

Comment. Section 4757 is amended for clarity.

Proposed Section 34110 (Existing Section 4302)

§ 4302 (amended). Retention of deer head

4302. Any person taking ~~any~~ a deer shall retain ~~in his~~ possession ~~during the open season thereon, and for 15 days thereafter,~~ of that portion of the deer's head which that in adult males normally bears the antlers, during the open season for that deer and for 15 days thereafter, and shall produce ~~the designated~~ that portion of the head upon the demand of any officer authorized to enforce the provisions of this code.

Comment. Section 4302 is amended for clarity, and to eliminate a gendered pronoun.

Proposed Section 34210 (Existing Section 4341)

§ 4341 (amended). Countersigning

4341. Any person legally killing a deer in this state shall have the tag for that deer countersigned by a person employed ~~in~~ by the department, a person designated for ~~this~~ that purpose by the commission, ~~or by~~ a notary public, a postmaster, ~~postmistress,~~ a peace officer, or an officer authorized to administer oaths, before transporting ~~such~~ the deer, except ~~for the purpose of taking it to transport the deer~~ to the nearest person authorized to countersign the tag, on the route ~~being followed~~ from the point where the deer is taken to that person.

Comment. Section 4341 is amended for clarity.

Proposed Section 34400 (Existing Section 4301)

§ 4301 (amended). Commercial use of deer meat

4301. (a) As used in this section, "deer" includes any animal of the family Cervidae.

~~(a) Subject to the provisions of this code permitting the sale of domestically raised game mammals (b) Except as otherwise provided in this section, it is unlawful to sell or purchase, or transport for the purpose of sale, any deer meat in this state, whether fresh, smoked, canned, or preserved by any means.~~

(c) The prohibition in subdivision (b) does not apply to the following:

(1) Conduct authorized by provisions of this code permitting the sale of domestically raised game mammals.

(2) except fallow Fallow deer meat processed by a slaughterer in accordance with Chapter 4 (commencing with Section 18650) of, and Chapter 4.1 (commencing with Section 18940) of, Part 3 of Division 9 of the Food and Agricultural Code, and except that deer meat may be

(3) Deer meat imported into this state from a foreign country for the purpose of processing (manufacturing) preparing and selling for

human consumption a product commonly known and properly labeled as venison ~~or jerky~~, deer jerky ~~or~~ , venison salami, or deer salami, ~~properly labeled as such, for human consumption.~~

(d) All deer meat imported into this state shall meet all of the sanitary and inspection requirements for wholesomeness, except an antemortem inspection, but including a postmortem inspection, as required for other meat imported for human consumption.

(e) The deer meat shall be in an identifiable condition and accompanied by a bill of lading, showing the name of the consignor, the consignee, and the weight of the deer meat shipped. A copy of the bill of lading shall be delivered to the nearest office of the department either prior to, or not later than, two days from the date of receipt of the deer meat.

(f) No ~~such~~ deer meat imported into this state may leave the premises of the original consignee unless written permission is received from the department, or unless it is processed into the form of the product commonly known as jerky or salami.

~~(b) As used in this section, "deer" includes any animal of the family Cervidae.~~

Comment. Section 4301 is amended for clarity, and to add additional subdivision and paragraph designations.

Proposed Section 34520 (Existing Section 457)

§ 457 (amended). Annual recommendations by department

457. (a) The Not later than December 15 of each year, the department shall determine prior to December 15 of each year its proposed recommendations to the commission relating to the management of deer, including its recommendations as to whether any antlerless deer hunts should be ordered.

(b) The recommendations of the department shall include the all of the following:

(1) The number, if any, of antlerless deer that should be taken in particular deer management units, whether the permits should be either sex permits, the proposed .

(2) Proposed dates for each such any recommended taking, and the .

(3) The number of permits proposed for each management unit.

(4) Whether the permits should be either-sex permits.

Comment. Section 457 is amended for clarity, and to add subdivision and paragraph designations.

Proposed Section 34525 (Existing Section 458, 459)

§ 458 (amended). Notice of proposed recommendation

458. (a) The Not later than December 15 of each year, the department not later than December 15 shall notify, by certified mail, provide notice of the details of its proposed recommendations under Section 457 to the board of supervisors of each county affected of the

~~details of its recommendations under Section 457 by a recommendation, by certified mail.~~

~~(b) The Not later than the February 1 next following the department's notice, the board of supervisors of any affected county may elect to hold a public hearing on one or more of the department's proposed recommendations of the department. Any such hearing shall be held prior to February 1. The director or his or her the director's representative shall attend the hearing all hearings held pursuant to this subdivision.~~

~~(c) The board of supervisors of any affected county to which this section is applicable may, by resolution, elect not to exercise the rights conferred by this section.~~

~~(d) This section applies only to the counties of, and to those districts or parts of districts in, Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra, Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Monterey, Napa, Nevada, Orange, Placer, Riverside, San Luis Obispo, Santa Barbara, Santa Clara, Tehama, Tuolumne, Yolo, and Yuba Counties.~~

Comment. Section 458 is amended for clarity, to add subdivision designations, and to eliminate gendered pronouns.

§ 459 (amended). Response to department recommendations

459. (a) ~~The Not later than the February 1 next following the department's notice, the board of supervisors of any affected county specified in Section 458 which that has held a public hearing pursuant to Section 458 may, not later than February 1, by resolution, object to the one or more proposed recommendations of the department, or may, by resolution, determine that one or more the proposed recommendation recommendations should be modified, setting forth and state the necessary modifications modification.~~

~~(b) A resolution objecting to, or setting forth stating necessary modifications modification of, the a proposed recommendations recommendation shall be based upon the on testimony and information presented at the a hearing conducted pursuant to subdivision (b) of Section 458, or presented to the board of supervisors at its meeting to consider the resolution.~~

~~(c) The department shall not recommend to the commission, and the commission shall not authorize, the taking of antlerless deer in a an affected county specified in Section 458 if it has received from the board of supervisors of that county submits a resolution objecting to that taking.~~

~~(d) If a board of supervisors of a an affected county has submitted submits a resolution determining that the department's one or more proposed recommendations on recommendations of the department relating to the taking of antlerless deer should be modified for that county, the department and the commission shall do one of the following:~~

(1) ~~The department shall either so modify its recommendations and the commission shall so modify its orders or the~~ to incorporate the modification determined to be necessary by the county board of supervisors.

(2) ~~The~~ department shall not recommend, and the commission shall not authorize, the taking of antlerless deer in that county.

Comment. Section 459 is amended for clarity, and to add subdivision and paragraph designations.

Proposed Section 34600 (Existing Section 4181.5)

§ 4181.5 (amended). Permit to take deer

4181.5. (a) Any owner or tenant of land or property that is being damaged or destroyed or is in immediate danger of being damaged or destroyed by deer may apply to the department for a permit to kill those deer. The department, upon satisfactory evidence of ~~that actual or immediately threatened~~ actual or immediately threatened damage or destruction, ~~actual or immediately threatened,~~ shall, pursuant to regulations adopted by the commission, issue a revocable permit for the taking and disposition of those deer, for a designated period not to exceed 60 days ~~under regulations promulgated by the commission.~~

(b) The regulations of the commission shall include provisions concerning the type of weapons to be used to kill the deer. The weapons shall be those as will ensure humane killing, but the regulations of the commission shall provide for the use of a sufficient variety of weapons to permit the designation of particular types to be used in any particular locality commensurate with the need to protect persons and property. Firearms using .22-caliber rimfire cartridges may be used only when authorized by the director or his designee. No pistols shall be used.

(c) The caliber and type of weapon to be used by each permittee shall be specified in each permit by the issuing officer who shall take into consideration the location of the area, the necessity for clean kills, the safety factor, local firearms ordinances, and other factors that apply. Rifle ammunition used shall have expanding bullets; shotgun ammunition shall have only single slugs, or, if authorized by the department, 0 or 00 buckshot.

~~(e) (d) The~~ At the time a permit is issued pursuant to subdivision (a), the department shall issue tags similar to those provided for in Section 4331 ~~at the same time the permit is issued. A permittee under this section~~ The permittee shall carry the tags while hunting the deer for which the permit was issued, and upon the killing of any deer, shall immediately fill do all of the following:

(1) Fill out both parts of the tag, and clearly punch out ~~clearly~~ the date of the kill. ~~One~~

(2) Attach one part of the completed tag ~~shall be immediately attached~~ to the antlers of antlered deer, or to the ear of any other deer, and ~~keep~~ keep that part of the tag attached to the deer until 10 days after the permit has expired. ~~The~~

~~(3) Obtain a countersignature on the other part of the tag shall be immediately sent to the department after it has been countersigned by any person authorized by pursuant to Section 4341.~~

~~(4) Send the countersigned part of the tag to the department.~~

~~(d) (e) A permit issued pursuant to this section may be renewed only after a finding by the department that further damage has occurred or will occur, unless that permit is renewed. A person seeking renewal of the permit pursuant to this subdivision shall account do all of the following:~~

~~(1) Account for all prior tags previously issued at the time he or she received any with all prior permits, and if .~~

~~(2) If any previously issued tags are unused, he or she shall show either that of the following:~~

~~(A) That any deer previously killed pursuant to a previously issued permit could not reasonably be have been tagged or why .~~

~~(B) Why the killing was not accomplished within the allotted time allotted for that killing, and why that the killing would be accomplished under a new time period.~~

Comment. Section 4181.5 is amended for clarity, and to add a subdivision designation and paragraph designations.

Proposed Section 37205, 37215 (Existing Section 4654)

§ 4654 (amended). Obtaining tag

~~4654. (a) Any resident of this state, To obtain a wild pig tag, a person must be 12 years of age or older, who possesses and possess a valid hunting license, or if a nonresident, a valid California nonresident hunting license.~~

~~(b) A person authorized to obtain a wild pig tag may procure obtain the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year, upon payment of a base fee of fifteen dollars (\$15), for each wild pig tag, as follows:~~

~~(1) For a resident of the state, fifteen dollars (\$15).~~

~~(2) For a nonresident, fifty dollars (\$50).~~

~~(b) Any nonresident, 12 years of age or older, who possesses a valid California nonresident hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifty dollars (\$50), for each wild pig tag.~~

~~(c) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.~~

Comment. Section 4654 is amended for clarity.

Proposed Section 41005, 43950 (Existing Section 5514)

§ 5514 (amended). Hook other than in mouth

5514. (a) It is unlawful, in inland waters, to kill or retain in possession any chinook, coho, or kokanee salmon, or any steelhead, that has not taken the bait or lure in its mouth, ~~in inland waters~~.

(b) Any chinook, coho, or kokanee salmon, or any steelhead, hooked in inland waters other than in its mouth ~~in inland waters~~ shall be released unharmed.

Comment. Section 5514 is amended for clarity, and to update an erroneous reference.

NO FURTHER ACTION RECOMMENDED

This part of the memorandum addresses proposed revisions for which the staff has concluded, after considering public comment, there is not sufficient evidence of a problem to justify proposing the revision.

This section of the memorandum will also be treated as a consent item. Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to approve the staff's recommendation that the matters discussed below be set aside without further action being taken.

Proposed Section 6050 (Existing Section 12007.5); Proposed Section 6204 (Existing Section 12008.1(a)); Proposed Section 6350 (Existing Section 711.4(f)); Proposed Section 6350 (Existing Section 12007); Proposed Section 6500 (Existing Section 5653(c))

Each of the proposed sections listed above would have continued the indicated existing sections without substantive change. In each case, a Commission Note following the section was included only to inquire as to whether the recodification of one or more cross-references in the existing section was accurate.

As no recodification of the existing code is contemplated in this phase of the study, **the staff recommends no further action relating to these provisions at this time.**

Proposed Section 10700 (Existing Section 1575)

Proposed Section 10700 would have continued existing Section 1575 without substantive change. A Commission Note following the section invited comment on the meaning of a phrase used in the section.

Although DFW agrees the phrase might be clarified, it does not believe a statutory revision is necessary at this time.

The staff concurs, and recommends no further action relating to this provision at this time.

Proposed Section 11220 (Existing Section 4007)

Proposed Section 11220 would have restated existing Section 4007 without substantive change. However, most of the revision proposed by the Commission was addressed by an amendment to the existing section following the issuance of the Commission's tentative recommendation.

The staff recommends no further action relating to this provision at this time.

Proposed Section 15615 (Existing Section 8601.5); Proposed Section 18800 (Existing Section 9029)

Proposed Sections 15615 and 18800 would have continued the two existing code sections indicated above, without intended substantive change. Both existing sections require commercial fishing gear to be marked with "the fisherman's identification number." A Commission Note following each section inquired, based in part on other text in the section, whether clarification was needed as to whether the required marking was intended to be the identification number of the fisherman who owned the gear, or the fisherman who was fishing with it.

DFW believes no clarification of either section in this regard is required, as the agency is not aware of any problem ever caused by a lack of clarity as to these references, and is concerned that any clarification could cause an undesired substantive change in existing law.

The staff recommends no further action relating to either of these provisions at this time.

Respectfully submitted,

Steve Cohen
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